

30th day after the date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. *All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate. (Italics supplied.)*

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the

Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

* * * * *

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section.

(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of Treasury of the United States.

Opinion of the District Court.

In the District Court of the United States, Southern District of California, Central Division.

Los Angeles Soap Company, a corporation, Plaintiff,
vs. United States of America, Defendant.

Opinion. March 28, 1944. James Alger Fee, District Judge.

This action is brought for the recovery of \$28,443.31 collected as interest upon certain taxes heretofore paid to the Collector of Internal Revenue by consideration of this court. The background for this action then, is a previous suit brought by the Los Angeles Soap Company against Nat Rogan as Collector of Internal Revenue of the appropriate district, for declaratory relief and for an injunction against the collection of the excise tax levied under Section 602½ of the Revenue Act of 1934 upon the first domestic processing of coconut oil. It was the claim of the soap company that the tax was unconstitutional and void. The matter came on for hearing before Honorable Leon R. Yankwich and on February 11, 1936, a temporary restraining order was entered which contained the following provisions:

"Plaintiff, however, to continue to file monthly returns with the defendant.

"PROVIDED, HOWEVER, that the plaintiff, LOS ANGELES SOAP COMPANY, give security in the amount of the said exactions claimed to have become due on the 31st day of January, 1936, in the sum of \$28,618.48, said security to be in the form of a Cashier's Check of the Farmers and Merchants National Bank of Los Angeles, in said amount, said check to be made payable to the order of R. S. Zimmerman, Clerk of the United States District Court, Southern

District of California, said check to be deposited in the Registry of the Court by the said Clerk pending the further order of this Court, and to deposit monthly amounts, hereafter, as may be disclosed by the said monthly returns."

Three payments were made under this order.

Thereafter, after a full hearing, Judge Yankwich, in an able opinion, found this section of the Act valid and the court without power to grant relief. An appeal was taken therefrom. In the order allowing appeal entered April 14, 1936, there were the following provisions relating to the deposits:

"PROVIDED, HOWEVER, that the plaintiff, pending the said appeal, shall in accordance with the Revenue Laws of the United States, continue to file with the defendant as Collector of Internal Revenue monthly returns of the tax imposed by Section 602½ of the Revenue Act of 1934, and PROVIDED FURTHER, HOWEVER, that the plaintiff will deposit in the registry of this Court on or before the last day of each month the amount of tax disclosed by such monthly returns, and in the event of the failure of the plaintiff to file said returns or deposit said moneys within ten (10) days after said time this order shall thereupon terminate in so far as it supersedes and suspends the order and decree of April 1st, 1936, and in so far as it enjoins and restrains the defendant as hereinbefore provided."

Payments were made regularly under the terms of this order.

The Circuit Court of Appeals dismissed the appeal from the order of Judge Yankwich on May 25, 1937, and issued mandate thereon. Judgment entered on this, under date of June 8, 1937, and provided in part as follows:

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant's costs in the sum of Six Thousand Four Hundred Eighty-eight Dollars and Seventy-five Cents (\$6,488.75) in addition to the sum of Twenty-five Dollars and Fifty Cents (\$25.50) already taxed herein, be and the same are assessed against plaintiff;

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon payment of said costs, the said sum of Six Hundred Forty-eight Thousand Eight Hundred Seventy-four Dollars and Fifty-four Cents (\$648,874.54) deposited by plaintiff in the registry of this court, be delivered to Nat Rogan as Collector of Internal Revenue for the Sixth District of California, to be applied against any tax now due from plaintiff under Section 602½ of the Revenue Act of 1934 without prejudice to the assertion against any deficiency in tax or interest upon such tax as may appear upon an audit of plaintiff's accounts by the Treasury Department of the United States, and without prejudice to the assertion by plaintiff of no deficiency in tax or interest upon such tax."

Thereafter the Collector demanded and received \$28,443.31 as interest upon the amounts totaling \$648,874.54 paid into the registry of the court by the soap company under order of court and by the court paid directly to the Collector.

There are no controlling decisions which have been called to the court's attention. The assessment of interest in the absence of a statute or a contract depends on the

equities even in a law action. No assessment thereof against the sovereign is possible without an express provision of law. The United States and the individual stand on entirely different footings as regards the assessment of interest against them.¹

A consideration of the situation as shown by the orders of the court is as important as reconnaissance before a battle. The first time interest is mentioned is in the final judgment turning the fund over to the Collector. That provision amounts only to a general reservation of the question as to the principal sums and the interest. No question as to the amount of the principal sums has been raised. The sole purpose of these protective reservations must have been to release the fund to the Collector immediately without the necessity of computing the exact sum due.

The plaintiff, Los Angeles Soap Company, did not tender into court in the first instance, the amount of the tax due. If it had been permitted to retain this money and the use thereof, a sufficient ground would exist for the assessment of interest against it. The court on its own motion apparently wisely provided for the payment of these amounts into its registry according to the terms of the monthly returns. The interest of the United States was fully protected thereby. If the court had conceived the notion that the United States was entitled to any money in addition thereto at that time, in the event of ultimate determination favorable to it, unquestionably provision would have been made therefor. The court did not even in the original order, require the deposit of a sum

¹*United States v. North American Co.*, 253 U. S. 330.

equal to interest upon the first instalment of tax which was then about ten days overdue. This construction is strengthened by the terms of the second order granting the appeal in which no mention of interest occurs. The court, by the final judgment, turned over to the Collector the full sum exacted under the previous orders. Thereby, all the purposes of the United States were subserved. There was no expense or labor of collection and no chance of loss. The court therefore, must be deemed to have acted in the light of the usual rule that a payment into court prevents the further running of interest.² If there had been further damage³ accruing to the United States, the court would have required security therefor when the fund was deposited. As it is, this primary order settled all questions arising as to the tax except the amounts so properly levied and deposited.

It is of interest to note that the United States, through the Clerk of this court, has apparently already collected from plaintiff \$6,488.75 or one per cent of this fund for the simple operation of retaining custody thereof.

²*Franklin Bank v. Burns*, 84 Ohio State 12; Ann. Cas. 1912 B 1004, note at 1005.

³"Where money is retained by one man against the declared will of another who is entitled to receive it, and who is thus deprived of its use, the rule of courts in ordinary cases is, in suits brought for the recovery of the money, to allow interest as compensation to the creditors for such loss. Interest in such cases is considered as damages, and does not form the basis of the action, but is an incident to the recovery of the principal debt. The right of action is the right to compel the payment of the money which is being retained. When he who has this right commences an action for its enforcement, he at the same time acquires a subordinate right, incident to the relief which he may obtain, to demand and receive interest. If, however, the principal sum has been paid, so that, as to it, an action brought cannot be maintained, the opportunity to acquire a right to damages is lost." *Stewart v. Barnes*, 153 U. S. 456, 462.

But it is objected that the ordinary rule does not apply here because the soap company is at fault.⁴ No principle should be more firmly established than the right of the citizen to test the validity of measures taken, without his actual consent, by the government, against his property. No penalty should be invoked when he attempts, by the use of the courts, to prevent an alleged illegal exaction. Here the attitude of the Collector seems to border on the vindictive.

It is true that coercive measures must be present in order to assure prompt collection of the revenue. The provision in this law for interest upon unpaid installments must be classed as coercive in nature. But this principle is not applicable here. The taxpayer has not had the use of the money and no punishment should be inflicted for his attempt to have the matter legally settled. These payments were actually made by the taxpayer and were received by the United States. In the first instance, these were made conditioned upon the payments legally being due. But, if the tax was valid, the soap company could not get them back. No further coercion was necessary beyond the order of the district court.

The defendant cites as sole authority to the contrary *The Grape Shot*, 10 Fed. Cas. 987, Fed. Case No. 5,703 (Cir. Ct. La. 1874). But that opinion relates only to the question of whether interest should be paid on supplies and loans obtained on a bottomry bond in admiralty. The

⁴The plaintiff in interpleader is really at fault because the money is not paid to the party entitled. Yet such a party is absolved upon deposit of the principal in court even though interest upon the sum so deposited would normally accrue according to the terms of an express contract. See *Franklin Bank v. Burns*, *supra*.

cause was tried before the war between the States. The decision was reversed by the Supreme Court of the United States and the cause sent back to the federal court long after the war in order to determine whether any of the items were properly chargeable against the bond. Of course the expression about interest, although not noticed by the Supreme Court, had no validity.

If the case means what some of the language removed from the context might indicate, it is sufficient to say it is contrary to the few federal cases which have touched on the subject.⁵ The United States is not entitled to interest on amounts paid to its Collector, impounded in the registry of its own court, by order thereof.

There was, however, a sum of interest due upon the first litigated installment of the tax due January 31, 1936, to the date of the deposit of the principal in court which was protected by the reservations in the final judgment. Plaintiff is entitled to recovery of the entire sum in controversy with the exception of this sum of interest above mentioned.

Findings and judgment for plaintiff may be submitted.

⁵*Himely v. Rose*, 9 U. S. 313; *Bowman v. Wilson*, 12 Fed. 864; *Groves v. Sentell*, 66 Fed. 179; *Potter v. Gardner*, 30 U. S. 718; *Fox v. Lofland*, 98 F. (2d) 589; *Spring v. South Carolina Ins. Co.*, 21 U. S. 268.

Opinion of Circuit Court of Appeals.

In the United States Circuit Court of Appeals for the Ninth Circuit.

United States of America, Appellant, vs. Los Angeles Soap Company, a corporation, Appellee. No. 11,032.

Jan. 29, 1946.

Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before Garrecht, Mathews and Healy, Circuit Judges.

Mathews, Circuit Judge.

Section 602½ of the Revenue Act of 1934, 26 U. S. C. A. Int. Rev. Acts, p. 778, provided:

“(a) There is hereby imposed upon the first domestic processing of coconut oil * * * a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil * * * except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil * * * is wholly the production of the Philippine Islands or any other possession of the United States * * * All taxes collected under this section with respect to coconut oil wholly of Philippine production * * * shall be held as a separate fund and paid to the Treasury of the Philippine Islands * * *¹

¹Subsection (a) of § 602-½ was amended by § 702 of the Revenue Act of 1936, 26 U. S. C. A. Int. Rev. Acts, p. 955, and by § 703 of the Revenue Act of 1938, 26 U. S. C. A. Int. Rev. Acts, p. 1145, but the amendments are not material here.

“(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business * * * Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe.² The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.”

Los Angeles Soap Company, hereafter called taxpayer, was at all pertinent times a processor of coconut oil which was wholly the production of the Philippine Islands. Taxpayer's processing of such oil was the first domestic processing thereof. Taxpayer was therefore required to pay, with respect to such oil, the tax imposed by the first sentence of § 602½. For each of the 16 calendar months commencing with December, 1935, and ending with March, 1937, taxpayer filed with the collector of internal revenue for the Sixth Collection District of California—the district in which its principal place of business was located—a return showing the tax payable by taxpayer for that

²By article 9 of Treasury Regulations 48, each processor was required to make a return for each calendar month and to file such return on or before the last day of the month following that for which it was made.

month. These taxes and the due dates thereof were as follows:

Month	Tax	Due Date
December, 1935	\$28,618.48	January 31, 1936
January, 1936	39,408.08	February 29, 1936
February, 1936	39,194.93	March 31, 1936
March, 1936	42,038.25	April 30, 1936
April, 1936	47,494.49	May 31, 1936
May, 1936	35,218.47	June 30, 1936
June, 1936	44,585.53	July 31, 1936
July, 1936	48,802.30	August 31, 1936
August, 1936	49,328.48	September 30, 1936
September, 1936	51,958.08	October 31, 1936
October, 1936	44,855.83	November 30, 1936
November, 1936	36,802.31	December 31, 1936
December, 1936	33,603.91	January 31, 1937
January, 1937	22,076.16	February 28, 1937
February, 1937	32,355.12	March 31, 1937
March, 1937	52,534.12	April 30, 1937

None of these taxes was paid when due. On February 11, 1936—11 days after the December, 1935, tax (\$28,618.48) became due and payable—taxpayer brought a suit in the District Court of the United States for the Southern District of California to enjoin and restrain the collector from collecting any tax then or thereafter payable by taxpayer under § 602½, on the ground that this section was unconstitutional. Thereupon, on February 11, 1936, the court issued a temporary restraining order restraining such collection, with the proviso that taxpayer should continue to file monthly returns and should “give security in the amount of * * * \$28,618.48, said se-

curity to be in the form of a cashier's check of the Farmers and Merchants National Bank of Los Angeles, in said amount, said check to be made payable to the order of R. S. Zimmerman, clerk of the United States District Court, Southern District of California, said check to be deposited in the registry of the court by the said clerk pending the further order of this court, and * * * deposit monthly amounts, hereafter, as may be disclosed by the said monthly returns."

The collector moved to dismiss the suit. The motion was granted, and a decree dismissing the suit was entered.³ Taxpayer petitioned for an order allowing an appeal from that decree and, pending such appeal, enjoining the collector from collecting any tax payable by taxpayer under § 602½. Such an order was granted on April 14, 1936, with the proviso that, pending its appeal, taxpayer should continue to file monthly returns and should "deposit in the registry of [the District] Court on or before the last day of each month the amount of tax disclosed by such monthly returns."

On May 3, 1937, while taxpayer's appeal was pending here, the Supreme Court held that § 602½ was constitutional.⁴ In view of that holding, it was stipulated that taxpayer's appeal should be dismissed. It was dismissed on May 25, 1937.⁵ Meanwhile taxpayer has deposited with the clerk of the District Court the amounts specified in the orders of February 11, 1936, and April 14, 1936—amounts equal to the taxes (exclusive of interest) payable

³*Los Angeles Soap Co. v. Rogan*, D. C. S. D. Cal., 14 F. Supp. 112.

⁴*Cincinnati Soap Co. v. United States*, 301 U. S. 308.

⁵*Los Angeles Soap Co. v. Rogan*, 9 Cir., 90 F. (2d) 1012.

by taxpayer for the 16 months mentioned above.⁶ These amounts aggregated \$648,874.54.

On June 8, 1937, the District Court ordered its clerk to deliver the \$648,874.54 to the collector, to be applied against any tax then due from taxpayer under § 602½. The order was complied with. Thus, on June 8, 1937, the collector received payment of the principal amount (\$648,874.54) of taxes payable by taxpayer for the 16 months mentioned above, but received no payment of interest thereon. Such interest, computed in accordance with § 602½, amounted to \$28,443.31.

On July 7, 1937, the collector collected the \$28,443.31 from taxpayer. Its claim for a refund having been denied, taxpayer brought a suit against the United States to recover the \$28,443.31 as having been illegally collected.⁷ The United States answered, jury trial was waived, the case was tried by the court without a jury, an opinion was filed,⁸ findings of fact and conclusions of law were stated, and judgment was entered in favor of taxpayer for \$28,372.06. From that judgment this appeal is prosecuted.

The trial court held, in substance and effect, that the 16 deposits made by taxpayer⁹ constituted payments of its taxes for the 16 months mentioned above. Since the December, 1935, tax (\$28,618.48) became due on January

⁶There were 16 deposits—one for each month. The first deposit (the one for December, 1935) was on February 13, 1936. Each subsequent deposit was on or before the last day of the month following that for which it was made.

⁷See § 24(20) of the Judicial Code, 28 U. S. C. A. § 41(20).

⁸*Los Angeles Soap Co. v. United States*, D. C. S. D. Cal., 56 F. Supp. 260.

⁹See footnote 6.

31, 1936, and the December, 1935, deposit was made on February 13, 1936, the court held that taxpayer owed no interest on the December, 1935, tax except that accruing between January 31, 1936, and February 13, 1936, which, according to the court's computation, was \$61.15.¹⁰ Since deposits for the 15 subsequent months—January, 1936, to March, 1937, inclusive—were made on or before the due dates of the taxes for those months, the court held that taxpayer owed no interest on those taxes. Therefore, of the \$28,443.31 collected as interest on July 7, 1937, the court held that \$28,382.16 (\$28,443.31 less \$61.15) was illegally collected. Of this amount, the court found that \$10.10 had been paid, refunded or credited to taxpayer.¹¹ It therefore concluded that taxpayer was entitled to recover \$28,372.06 (\$28,382.16 less \$10.10). Hence the judgment here appealed from.

The court erred in holding that the deposits made by taxpayer constituted payments of its taxes. The deposits were made, not as tax payments, but as a means of preventing the collector from exacting such payments. By that means, taxpayer procured and kept in force the orders of February 11, 1936, and April 14, 1936, and so prevented the collection of its taxes until June 8, 1937. The deposits were in the nature of a cash bond and carried no more significance than would the giving of a surety bond. Such deposits are not payments.¹²

Taxpayer, in its brief, speaks of having made payments into court pursuant to the orders of February 11, 1936,

¹⁰Actually, the interest accruing on the December, 1935, tax between January 31, 1936, and February 13, 1936, was \$128.28.

¹¹The record discloses no basis for this finding.

¹²*Rosenman v. United States*, 323 U. S. 658.

and April 14, 1936. There were no such payments. The orders of February 11, 1936, and April 14, 1936, did not require taxpayer to make any payment, into court or otherwise. Instead, they required it to make deposits, and it did so. No payment was made until June 8, 1937.

Taxpayer points out that when it made deposits pursuant to the orders of February 11, 1936, and April 14, 1936, it lost the use of the amounts deposited just as it would have done had these amounts been paid to the collector. The fact remains, however, that these amounts were not paid to the collector until June 8, 1937. Until then, neither the United States nor the Philippine Islands had the use thereof.

Since its taxes for the 16 months mentioned above were not paid, in whole or in part, until June 8, 1937, and only the principal amount thereof (\$648,874.54) was paid on that date, taxpayer owed the interest (\$28,443.31) which the collector collected on July 7, 1937. There was and is no basis for holding that this interest, or any part thereof, was illegally collected.

Judgment reversed.

(Endorsed): Opinion. Filed Jan. 29, 1946. Paul P. O'Brien, Clerk.